

2 Cupania Circle
Montorey Park, CA 91754

Date: JUN 16 1998

DEPARTMENT OF THE TREASURY
Western Key District

Employer Identification Number:

Case Number:

Person to Contact:

Telephone Number:

Refer Reply to:

Dear Applicant:

We have considered your application for exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code (Code). Based on the information submitted we have concluded that you do not qualify for exemption under this section.

FACTS:

The information submitted with your application shows that you were incorporated under the nonprofit corporation laws of [redacted] on [redacted]. Your articles of incorporation state the purpose of your organization is "to publish, print and distribute literary magazines."

Per your application, Form 1023, your activities and the percentage of time spent on each activity are as follows:

1. Publishing and distributing a literary magazine - [redacted] Percent.
2. Selling advertising in your magazine - [redacted] percent.
3. Applying for grants and donations - [redacted] percent
4. Organizing and running fiction readings - [redacted] percent.

Your magazine will be published quarterly. You have published [redacted] volumes of your magazine to date. The magazine sells for \$[redacted] an issue and \$[redacted] for an annual subscription. You distribute the

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DATE	RECEIVED	RECEIVED	RECEIVED	RECEIVED
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE

CORRESPONDENCE APPROVAL AND CLEARANCE

FORM 103-A (9-74)

U.S. GOVERNMENT PRINTING OFFICE: 1970-008

0034-0000

magazines through various bookstores and magazine stands throughout [REDACTED] but primarily in [REDACTED]

In response to our request for additional information, you state you will pay your ad sales representative a commission in the range of [REDACTED] to [REDACTED] percent of sales. To date, all ad sales have been done by editors who are not currently receiving a salary. You may pay your editors a salary in the future, but exact salaries have not yet been determined.

Your proposed budgets for [REDACTED] and [REDACTED] list the following sources of support and estimated income from each source:

<u>ACTIVITY</u>	<u>INCOME</u>
Ad Sales	\$ [REDACTED]
Subscriptions Sales	[REDACTED]
Single issue Sales	[REDACTED]
Donations	[REDACTED]

Total Projected Income	\$ [REDACTED]

[REDACTED], In response to our request for an income statement for tax year [REDACTED], you provided the following sources of support:

<u>ACTIVITY</u>	<u>INCOME</u>
Ad Sales Revenue	\$ [REDACTED]
Donations (in kind)	[REDACTED]
Donations (individual)	[REDACTED]
Submission Fees	[REDACTED]
Single Issue Sales	[REDACTED]
Subscription Sales	[REDACTED]

Total Revenue	\$ [REDACTED]

You indicate that when you start receiving grant money and contributions, you will cease selling advertising in the magazine. You also indicate that it is not your intention to make a profit.

ISSUE:

Does the organization qualify for exemption from Federal income tax as an organization described in section 501(c)(3) of the Code.

LAW:

Section 501(c)(3) of the Code describes certain organizations exempt from income tax under Code section 501(a) and reads in part as follows:

"(3) Corporations, and any community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on legislation, (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of any candidate for public office."

Section 1.501(c)(3)-1(a) of the Income Tax Regulations (Regs) provides that in order to be exempt as an organization described in section 501(c)(3) of the Code, the organization must be both organized and operated exclusively for one or more of the purposes specified in that section. An organization that fails to meet either the organizational or the operational test is not exempt.

Section 1.501(c)(3)-1(b) of the Regs provides that an organization is organized exclusively for the required purposes only when its charter or other organizing document authorizes it to carry on activities that are in furtherance of those purposes. An organization is not organized exclusively for exempt purposes if its articles expressly empower it to carry on activities which are not in furtherance of exempt purposes.

Section 1.501(c)(3)-1(c) of the Regs provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it primarily engages in activities which accomplish exempt purposes.

Regs section 1.501(c)(3)-1(d)(3) defines "educational" and reads in part as follows:

"... (3) *Educational defined* - (1) In general. The term "educational," as used in section 501(c)(3), relates to-

(a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or

(b) The instruction of the public on subjects useful to the individual and beneficial to the community."

Revenue Ruling 60-351, 1960-2 C.B. 169, provides that a non-profit corporation that publishes a foreign language magazine containing fiction, poetry, book reviews and articles alleged to be

of a literary, scientific and educational character and available to the general public through regular paid subscriptions does not qualify for exemption.

Revenue Ruling 66-147, 1966-1 C.B. 137, held that an organization qualifies for exemption from Federal income tax under section 501(c)(3) of the Code where it is formed to survey scientific and medical literature published throughout the world and to prepare and distribute free of charge abstracts taken from such literature.

Revenue Ruling 67-4, 1967-1 C.B. 121, holds that an organization formed for the purpose of encouraging basic research in specific types of physical and mental disorders, to improve educational procedures for teaching those afflicted with such disorders, and to disseminate educational information about such disorders, by the publication of a journal containing current technical literature relating to these disorders. The organization may qualify for exemption from Federal income tax under section 501(c)(3) of the Code if it meets prescribed conditions.

Revenue Ruling 77-4, 1977-1 C.B. 141, holds that a nonprofit organization whose only activities are preparing and publishing a newspaper of local, national, and international news articles with an ethnic emphasis, soliciting advertising and selling subscriptions to the newspaper in a manner indistinguishable from ordinary commercial publishing practices, is not operated exclusively for charitable and educational purposes and does not qualify for exemption.

People Of God Community v. Commissioner, 75 T.C. 127 (1980) describes a religious organization where ministers are paid a predetermined percentage of the gross receipts. There was no upper limit set for the total amount the ministers could receive under the arrangement. It was held that part of the petitioners net earnings inure to the benefit of private shareholders or individuals and accordingly the organization is not exempt under section 501(c)(3). The Court specified that it does not intend to imply that all contingent compensation arrangements made by charitable organizations will preclude tax exempt status.

Better Business Bureau v. United States, 326 U.S. 279 (1945) holds that regardless of the number of truly exempt purposes, the presence of a single substantial non exempt purpose will preclude exemption under section 501(c)(3) of the Code.

Analysis And Conclusion:

All of the preceding Code sections, Regulation sections, Revenue Rulings and Court cases describe the criteria under which an organization may be exempt under Code section 501(c)(3). They also

describe the basis for which organizations were denied exemption because they were not operated exclusively for one of the specific purposes of that section or because of inurement to individuals.

Our analysis of your case indicates that none of your activities are educational within the meaning of Code section 501(c)(3). You do not meet the definition of "Educational" as defined in Regs section 1.501(c)(3)-1(d)(3) by publishing fictional material. You also have contingent compensation agreements with your sales representative that could result in private benefit to individuals.

Your organization's activities are similar to the activities of the organizations described in Revenue Rulings 60-351 and 77-4. Revenue Ruling 60-351 emphasize that the corporation's activities are business activities in accordance with ordinary commercial publishing practices. The fact that the corporation is not organized for profit does not change the fact that the corporation operates in a similar manner. The same holds true for your organization.

The activities in Revenue Ruling 77-4 are also commercial and non educational and not exclusively 501(c)(3). None of your activities are described in Code section 501(c)(3) and are commercial.

Your activities can be distinguished from the organization described in Revenue Ruling 66-147 that was determined to be exempt from Federal income tax. The organization published a journal which contained articles of a scientific and medical nature. The publishing of the journal contributes importantly to the accomplishment of the organization's exempt purpose. The organization received its operating funds from government grants and contributions as opposed to advertising and subscription sales income.

To be considered for tax exempt status under Code section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in that Code section. Also, its activities must be restricted to those permitted a Code section 501(c)(3) organization. It is the position of the Internal Revenue Service based on the information submitted, that you are not entitled to exemption from Federal income tax as an organization described in Code section 501(c)(3), inasmuch as you are not organized and operated exclusively for any of the specified purposes within that Code section.

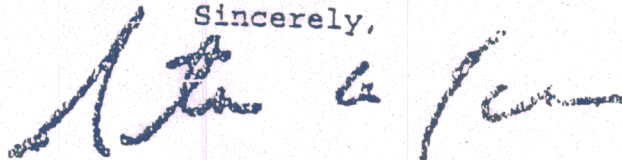
If you are in agreement with this proposed determination, we request that you sign and return the enclosed Form 5018. Please note the instructions for signing on the reverse side of the form.

If you are not in agreement with this proposed determination, we recommend that you request a hearing with our office of Regional Director of Appeals. Your request for a hearing should include a written appeal giving the facts, law, and any other information to support your position as explained in the enclosed Publication 892. You will then be contacted to arrange for a hearing. The hearing may be held at the office of Regional Director of Appeals, or if you request, at a mutually convenient District office.

If we do not hear from you within 30 days from the date of this letter, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies and will then become our final determination. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If you have any questions, please contact the person whose name appears on the heading of this letter.

Sincerely,



Steven A. Jensen
District Director

Enclosure(s):
Publication 892
Form 6018